

1 **Mark Antoine Foster, In Pro Per**
2 **200 Corpus Cristie Road #A**
3 **Alameda, California 94502**
4 **(415) 756-1611**
5 **(619) 646-3564**

FILED

MAR 21 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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7
8 **UNITED STATES DISTRICT COURT**
9
10 **NORTHERN DISTRICT OF CALIFORNIA**
11
12 **SAN FRANCISCO DIVISION**

Case No. **C-08-01337 MHP**

12 **MARK ANTOINE FOSTER,**
13
14 **Plaintiff,**

DECLARATION OF MARK
ANTOINE FOSTER IN SUPPORT
THEREOF AND EXHIBITS 1 THRU 3
ATTACHED THERETO

15 **vs.**

16 **MORGAN LEWIS & BOKIUS, LLP, and**
17 **ERIC MECKLEY, an individual,**
18 **and DOES 1 Through 81**
19 **Defendants**

Date: April 29, 2008
Time: 2:00 p.m.

20 I MARK ANTOINE FOSTER declare that:

- 21 1. I am the plaintiff in this action and have personal knowledge of each fact stated in
22 the complaint filed against Morgan Lewis and Bokius and Eric Meckley, an
23 individual, a parties to this action.
24 2. Attached hereto as Exhibit 1 and incorporated herein by reference is Plaintiff's
25 original complaint and summons filed by plaintiff on February 7, 2008.

DECLARATION OF MARK ANTOINE FOSTER

C- 08-01337

3. Attached hereto as Exhibit 2 and incorporated herein by reference are Plaintiff's original complaints and summons filed against Specialty Risk Services, and Gretchen Devine, an individual, and Aramark Sports LLC, and Aramark Corporation filed on February 7, 2008.

4. Attached hereto as Exhibit 3 and incorporated herein by reference is the notice showing it was not filed until March 12, 2008.

I declare under penalty under the laws of the state of California that the foregoing is true and correct and that this declaration was executed this day on the 21st of March 2008, at San Francisco, California.

Mark A. Foster
Mark Antoine Foster, In Pro Per

EXHIBIT 1

ENDORSED
FILED
Superior Court of California
County of San Francisco

Mark Antoine Foster, In Pro Per
200 Corpus Cristie Road #A
Alameda, CA 94502
(415) 756-1611

FEB 07 2008

GORDON PARK-LI, Clerk

BY: DEBORAH STEPPE
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JUL 11 2008 -9⁰⁰AM

DEPARTMENT 212

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CIVIL UNLIMITED JURISDICTION

CGC-08-471937

MARK ANTOINE FOSTER,

Plaintiff,

vs.

MORGAN LEWIS & BOCKIUS, LLP
AND ERIC MECKLEY, as an
Individual, and DOES 1 through
81

Defendants

**COMPLAINT FOR DAMAGES FOR
CIVIL RIGHTS (related to Employment
discrimination)**

1. Fraud and Intentional Deceit
2. Intentional Misrepresentation of Fact
3. Negligent Misrepresentation
4. Suppression of Fact
5. Mail Fraud (18 U.S.C Sec. §1341)
6. Conspiracy to Mail Fraud (18 U.S.C. Sec. §1345, §1349)
7. Wire Fraud (18 U.S.C. Sec. §1343)
8. Breach of Fiduciary Duty
9. Intentional Infliction of Emotional Distress
10. Negligent Infliction of Emotional Distress

INTRODUCTION

This case is brought against defendants pursuant to California Codes of Civil Procedure §1709, §1710 and §1572 for committing acts that constitute fraud and intentional deceit, mail fraud and wire fraud and conspiracy to defraud. Defendant

1 Law Firm Morgan Lewis & Backius and its employee attorney Eric
2 Meckley conspired with their clients Aramark Sports, L.L.C. and
3 Aramark Corporation to defraud plaintiff of his disability
4 discrimination claim against defendant Aramark Corporation. The
5 acts were committed to shield their client from a "would be"
6 claim of disability discrimination claim and deprive plaintiff
7 of any monetary damages that would be awarded to plaintiff as a
8 result. Defendant's acts were related to plaintiff's previous
9 employment with ~~ARAMARK~~, as defendants committed these
10 acts after plaintiff's employment with the defendants ended.

11 Although the acts were committed after plaintiff's
12 employment ended, the acts were connected to claims plaintiff
13 alleged in a previous complaint plaintiff filed against
14 ~~ARAMARK~~ in San Francisco Superior Court on March 9, 2007.
15 These acts show a continuing pattern of further deprivation of
16 plaintiff's civil rights by defendants.

17 The connected case number 07461178, which alleges acts that
18 were committed by defendants while plaintiff was employed with
19 the ~~ARAMARK~~ has been presently removed to federal court by
20 ~~ARAMARK~~ on January 30, 2008 which plaintiff believes is an
21 attempt to delay trial and prosecution of the case in state
22 court. Plaintiff will file a motion for remand in federal court
23 to have the case moved back to state court within 30 days of its
24 removal.

25 ~~ARAMARK~~ stated to the court in their case management

1 conference statement that they would file a motion for summary
2 judgment or as an alternative a motion for summary adjudication
3 but instead, upon discovering that plaintiff has acquired enough
4 evidence to support his claims through his own discovery plan,
5 defendants removed the case to federal court in an attempt to
6 divert plaintiff and gather their thoughts as to how they want
7 and should settle the case.

8 Plaintiff will ~~file~~ also file a second amended complaint
9 adding claims alleging Wrongful Termination, additional
10 retaliation that resulted in Fraud and Intentional Deceit,
11 Suppression of Fact, and to change quid pro quo sexual
12 harassment to hostile work environment sexual harassment.

13 Plaintiff will also file a supplemental complaint alleging
14 continued retaliation after plaintiff filed his complaint on
15 March 9, 2007.

16 PARTIES

17 1. Plaintiff Mark Antoine Foster was an employee of
18 defendant Morgan and Lewis's client Aramark Sports and
19 Entertainment, a subsidiary of Aramark Corporation. He worked
20 for the Carnelian Room located at 555 California Street, San
21 Francisco, California.

22 2. Defendants does 1 through 81, inclusive, are sued
23 under fictitious names. Their true names and capacities are
24 unknown to plaintiff. When their true names and capacities are
25 ascertained, plaintiff will amend this complaint by inserting

1 their true names and capacities herein. Plaintiff is informed
2 and believes and thereon alleges that each of the fictitiously
3 named defendants is responsible in some manner for the
4 occurrences herein alleged, and such defendants caused plaintiff
5 damages as herein alleged.

6 3. Plaintiff is informed and believes, and thereon
7 alleges, that at all times herein mentioned each and every
8 defendant was the agent, servant, employee and/or representative
9 of each other defendant and was, in doing the things complained
10 of herein, acting within the scope of said agency, service,
11 employment and or representation, and that each and every
12 defendant herein is jointly and severally responsible and liable
13 to plaintiff for the damages hereinafter alleged.

14 JURISDICTION AND VENUE

15 4. Jurisdiction is proper in this court as the acts
16 complained of occurred in San Francisco,
17 California.

18 5. The amount in controversy exceeds limited
19 jurisdiction.

20 6. Plaintiff timely files this complaint, as he
21 discovered the fraudulent acts of the defendants in
22 December 2007.

23 7. Plaintiff will amend this complaint to allege those
24 causes of action once defendants respond to the claim.

25 **FIRST CAUSE OF ACTION**
FRAUD AND INTENTIONAL DECEIT

(California Civil Codes 1709, 1710 and 1572)

FIRST COUNT

INTENTIONAL MISREPRESENTATION OF FACT

8. Plaintiff realleges and incorporates herein by reference every allegation stated herein.

9. Plaintiff is informed, believes and therefore alleges that the defendants' acts constituted fraud and intentional deceit due to the defendants attempting to help their client cover-up a possible or "would-be" disability discrimination claim from plaintiff, in the event plaintiff discovered that defendants discriminated against due to his disability.

10. On or around March 28, 2006, plaintiff requested a medical leave from Aramark due to work related stress allegedly caused by two of the Aramark's supervisor/managers. On or around March 28, 2006, plaintiff signed an voluntary resignation agreement stating he would return no later than June 15, 2006 and that if he did not return by June 15, 2006, his absence would be considered a voluntary quit and he will be terminated on that day.

11. On or around June 15, 2006, plaintiff did not return to work due to (1) still being disabled and (2) due to fear of further retaliation from ~~ARAMARK~~, and (3) due to fear of being terminated once he did return to work for the Aramark.

12. Plaintiff is informed, believes and therefore alleges that he was forced to resign on June 15, 2006 pursuant to the voluntary resignation agreement he signed on March 28, 2006,

1 absent Aramark offering plaintiff a further reasonable
2 accommodation to his disability before allowing him to "
3 voluntarily quit", as voluntary quit in this case is voluntary
4 termination, which results in its simple form - termination of
5 employment.

6 13. On or around March 9, 2007, plaintiff filed a
7 complaint against defendants Aramark Sports, LLC, and Ying Kee
8 McVicker and Mathew Lee as individuals, alleging Retaliation,
9 Harassment, Constructive Discharge, Failure to Prevent
10 Harassment, and Intentional Infliction of Emotional Distress.
11 Plaintiff did not in this complaint allege Disability
12 Discrimination due to not knowing his was or had been subject to
13 disability Discrimination at that point in time. Plaintiff
14 discovered in January 2008 that he had been subject to
15 disability discrimination on June 15, 2006.

16 14. Plaintiff alleges that sometime in Feb. 2007, he
17 requested his employee records from Aramark, specifically
18 Aramark's HR Manager, James Chan. Mr. Chan released plaintiff's
19 employee records which contained a copy of the voluntary
20 resignation agreement dated March 28, 2006 plaintiff signed
21 agreeing to return on June 15 2006. On the Face of the Voluntary
22 Resignation Agreement was a notation made by James Chan stating
23 that he communicated with the Executive Chef regarding Plaintiff
24 not returning to work on June 15, 2006. Plaintiff alleges that
25

1 this is evidence that he was terminated pursuant to the
2 voluntary resignation agreement, in addition to the fact that
3 the mere existence of the voluntary resignation agreement shows
4 plaintiff was more than likely terminated pursuant to it.

5 15. On or around August 28, 2007, plaintiff served Aramark
6 a request for documents demanding all documents relevant to his
7 termination; instead of Aramark producing the same documents he
8 received from James Chan before he filed his lawsuit ~~ARAMARK~~ :
9 presented another version of the voluntary resignation without
10 the notation of James Chan on the face of the agreement. This
11 shows defendants withheld evidence.

12 16. On or around December 20, 2007, plaintiff realized
13 through research that he had been subject to Disability
14 Discrimination and in December 2007, filed a motion to amend his
15 complaint to add Disability Discrimination under the ADA, UNRUH
16 and FEHA. Defendants stipulated with plaintiff to allow the
17 amendment.

18 17. On or Around Jan 15, 2008, Plaintiff discovered
19 through his Discovery served on Aramark that he was defrauded by
20 defendants, as defendants conspired with their clients to help
21 cover up or attempt to cover-up the fact that they had
22 discriminated against plaintiff due to his mental disability.

23 18. On or around May 2, 2007, defendants with their client
24 Aramark and their clients' Worker's compensation Attorneys Gray
25

1 and Prouty, requested from plaintiff that he agree and sign a
2 document stating that he voluntarily resigned on May 1, 2007.
3 The purpose for defendants' request was to allow the proposed
4 agreement to void out the agreement signed on March 28, 2006, as
5 this agreement is the initial and actual reason why plaintiff
6 was terminated: which was when plaintiff was forced to resign
7 due to his disability violating ADA, the Unruh and FEHA.

8 19. Defendants and their client Aramark submitted the
9 agreement to plaintiff for his signature. Plaintiff then refused
10 to agree that he resigned on May 1, 2007, knowing that he
11 resigned on June 15, 2006, pursuant to the agreement signed on
12 March 28, 2006.

13 20. Defendants insisted that plaintiff sign the agreement
14 prior to releasing his already agreed upon Worker's Compensation
15 settlement of \$5,500. Plaintiff altered the date and signed the
16 agreement as voluntarily resigning on June 15, 2006, not May 1,
17 2007 as Defendants requested he do. Although plaintiff did not
18 sign the agreement as voluntarily resigning on May 1, 2007, he
19 did sign agreeing that he *voluntarily resigned* on June 15, 2006.
20 Even though defendants were not successful in getting plaintiff
21 to agree that he resigned on May 1, 2007, they planned to use
22 the agreement anyway to void out the original agreement signed
23 on March 28, 2006. Defendant planned to use the new agreement to
24 say that plaintiff resigned on June 15, 2006 to give the
25

1 impression that he voluntarily resigned on his own on June 15,
2 2006 and not pursuant to the agreement he signed on March 28,
3 2006, to shield themselves from disability discrimination.
4 Although the mere existence of any voluntary agreement plaintiff
5 signed in May 2007, or anytime thereafter is a fraud.

6 21. Plaintiff is informed believes and therefore alleges
7 that the defendants made a false representation offering the
8 voluntary resignation agreement. The true facts being; Aramark
9 forced plaintiff to resign pursuant to the voluntary resignation
10 agreement he signed on March 28, 2006, and defendants and Aramark
11 were attempting to suppress this material fact. Defendants
12 requesting plaintiff to sign the agreement presented on May 2,
13 2007. This act was FRAUD in its purest Form. Defendants abused
14 their position of attorneys and held back the agreed upon
15 settlement to coerce plaintiff to sign the agreement, causing
16 plaintiff to defraud his own self. Plaintiff signed the
17 agreement and returned it, as this proves that the FRAUD reached
18 its full Fruition or Justifiable reliance, damaging plaintiff
19 even further.

20 22. Plaintiff alleges that it was a misrepresentation of
21 Material Fact by Defendants to request plaintiff to agree and
22 sign an agreement stating that his voluntary resignation was on
23 a date after he had already voluntarily resigned in an attempt
24 to cover up a possible disability discrimination claim against
25

1 their clients.

2 23. Defendants attempt to use the document to void out his
3 original resignation agreement signed on March 28, 2006 was
4 despicable conduct done with malice. Defendants attempted to
5 help their clients defraud Plaintiff of his rightful claim of
6 disability discrimination and the tangible and intangible
7 benefits representing monetary and other remedy for damages that
8 could be awarded due to the disability claim. This act is
9 clearly an intentional misrepresentation of Material Fact.

10 24. When the Defendants made the representations, they
11 knew then to be false or were based on false pretenses or
12 misrepresentations, as the defendants made these representations
13 with the intention to deceive and defraud plaintiff and to
14 induce plaintiff to act in reliance on these representations in
15 the manner alleged, or with the expectation that plaintiff would
16 so act. Defendants expected plaintiff to sign the agreement so
17 he could receive his WC Settlement of \$5,500 and coerced him to
18 sign the agreement before agreeing to release payment of the
19 \$5,500 to him.

20 25. Plaintiff at the time these representations were made
21 by Defendants, believed that that the Defendants representations
22 were true. Due to believing, plaintiff thought it was acceptable
23 or all right to sign the document, and that it was not depriving
24 him of any further rights and that there was a legal forthright

1 reason for defendants requesting him to sign the voluntary
2 agreement. Aramark and the defendants used their positions as
3 attorneys to help present the document to trick plaintiff, as if
4 it was legal when actually it was not, as this shows that
5 plaintiff's reliance on defendant representation was justified.

6 26. Plaintiff alleges that he has satisfied all the
7 elements for intentional misrepresentations, which includes: (1)
8 misrepresentations (2) Material Fact (3) Knowledge of Falsity
9 (4) Intent to induce reliance (5) Justifiable reliance and (6)
10 Causation and Damages

11 27. Defendants attempt to defraud Plaintiff violated
12 California Civil Codes 1709, 1710, and 1572

13 28. As a proximate result of the fraudulent conduct or the
14 defendants as herein alleged, plaintiff was subjected to Fraud
15 and Intentional Deceit that subject or caused him emotional
16 distress and mental anguish.

17 29. The aforementioned conduct of defendants was an
18 intentional misrepresentation, deceit, or concealment of a
19 material fact know to the defendants with the intention on the
20 part of the defendants to deprive the plaintiff of property or
21 legal rights, causing injury, and was despicable conduct that
22 subjected plaintiff to a cruel unjust hardship in conscious
23 disregard of the plaintiff's rights, so as to justify an award
24 of exemplary and punitive damages.

SECOND COUNT

Negligent Misrepresentation

30. When the defendants made the representation they had no reasonable grounds for believing them to be true. Defendants knew that (1) it was not necessary for Plaintiff to sign the Agreement at all (2) it was not necessary for plaintiff to sign the agreement as a condition to him receiving or defendants releasing plaintiff's already agreed upon worker's compensation settlement of \$5,500.

31. Plaintiff alleges that the defendants made the representation with intent to induce plaintiff to rely upon it.

32. Plaintiff alleges that he was unaware of the falsity of the representation; in that he did not know that the purpose or the agreement was to shield Aramark from a possible discrimination disability claim from plaintiff, depriving plaintiff of any possible monetary damages from the claim.

33. Plaintiff alleges that he acted in reliance upon the truth of the representation; as in him thinking it was necessary to sign the agreement, as he believed it to be safe or true because it was presented to him by Aramark's worker's compensation attorney. Plaintiff believed it to be true because he knew Defendants and Aramark's Worker's Compensation Attorneys knew exactly when he actually resigned or knew Plaintiff

1 resigned on June 15, 2006 pursuant to the March 28, 2006
2 agreement.

3 34. Defendants initiating these actions in an attempt to
4 DEFRAUD plaintiff of his claim of disability discrimination and
5 any possible monetary damages that would be awarded in lieu of
6 the disability discrimination claim, violated California Codes
7 \$1572, \$1709 and \$1710, Therefore Plaintiff is entitled to
8 Statutory Damages, Costs and awards of Attorney Fees.

9 THIRD COUNT

10 Suppression of Fact

11 35. Defendants suppressed the fact that if was not
12 necessary for plaintiff to agree and sign the voluntary
13 resignation agreement to receive his worker's compensation
14 settlement of \$5,500.

15 36. In addition on or around July 2, 2007, Aramark's
16 worker's compensation Attorney Dana Mitchell filed an opposition
17 to plaintiff's Readiness to Proceed. In the opposition,
18 Defendants state or implied that the reason plaintiff's
19 settlement of \$5,500 had not been paid was due to plaintiff
20 filing an EEOC Claim subsequent to agreeing to the settlement of
21 \$5,500 with defendants. Defendants lied to the Worker's
22 Compensation Appeals Board to create a "Smoke screen" or cover
23 up as to the actual reason plaintiff's settlement was held up,
24 which was defendants wanting to force plaintiff to sign the

1 agreement to shield them from the disability discrimination
2 claim. Defendants concealed from the Worker's Compensation
3 Appeals Board that there was no EEOC Claim filed by plaintiff
4 subsequent to the agreement of the worker's compensation
5 Settlement.

6 37. The defendants made the failure to disclose and
7 suppressed and/or concealed the information mentioned herein
8 alleged, with the intent to induce the plaintiff to act in the
9 manner herein alleged in reliance thereupon, with the intent to
10 cause plaintiff to sign the agreement.

11 38. As a proximate result of the fraudulent conduct or the
12 defendants as herein alleged, plaintiff was subjected to Fraud
13 and Intentional Deceit that subject or caused him emotional
14 distress and mental anguish.

15 39. The aforementioned conduct of defendants was an
16 intentional misrepresentation, deceit, or concealment of a
17 material fact known to the defendants with the intention on the
18 part of the defendants of to deprive the plaintiff of property
19 or legal rights, causing injury, and was despicable conduct that
20 subjected plaintiff to a cruel unjust hardship in conscious
21 disregard of the plaintiff's rights, so as to justify an award
22 of exemplary and punitive damages.

23 40. Defendants' attempt to defraud plaintiff violated
24 section 1572 of the California Civil Code. Plaintiff is
25

1 therefore entitled to Statutory Damages, Costs and award of
2 Attorney fees.

3 Wherefore Plaintiff prays for judgment against Defendants
4 as more fully set forth below.

5 SECOND CAUSE OF ACTION

6 Mail Fraud (18 U.S.C. Section 1341)

7 41. Plaintiff realleges and incorporates therein by
8 reference every allegation stated herein.

9 42. On or around May 2, 2007 Defendants mailed to
10 Plaintiff by way of his Worker's Compensation Attorney Mary Lou
11 Williams, the voluntary agreement, which was the execution of a
12 scheme to defraud plaintiff.

13 43. Title 18 - Crimes and Criminal Procedures, Part 1 -
14 Crimes Chapter 63 section 1341 Frauds and Swindles States:
15 Whoever, having devised or intending to devise any scheme or
16 artifice to defraud, or for obtaining money or property by means
17 of false or fraudulent pretenses, representations, or promises,
18 or to sell, dispose of, loan, exchange, alter, give away,
19 distribute, supply, or furnish or procure for unlawful use any
20 counterfeit or spurious coin, obligation, security, or other
21 article, or other article, or anything represented to be or
22 intimated or held out to be such counterfeit or spurious
23 article, for the purpose of executing such scheme or artifice or
24 attempting so to do, places in any post office or authorized
25

1 depository for mail matter, any matter or thing whatever to sent
2 or delivered by the Postal Service, or Deposits or causes to be
3 deposited any matter or thing whatever to sent or delivered by
4 any private or commercial interstate carrier, or takes or
5 receives therefrom, any such matter or thing, or knowingly
6 causes to be delivered by mail or such carrier according to the
7 direction thereon, or at the place at which it is directed to be
8 delivered by the person to whom it is addressed, any such matter
9 or thing shall be fined under this title or shall be fined under
10 this title or imprisoned not more than 20 years, or both.

11 44. Upon Defendants placing the Voluntary Resignation
12 Agreement in the Post Office for Mail matter to be sent by the
13 Postal Service, the Defendants committed Mail Fraud.

14 FIRST COUNT OF MAIL FRAUD

15 45. On or around May 2, 2007 upon Defendants mailing the
16 Voluntary Resignation Agreement to Mary Lou Williams at 4104 24th
17 Street, San Francisco, CA 94104 constitutes first count of mail
18 fraud.

19 SECOND COUNT OF MAIL FRAUD

20 46. On or around May 2, 2007 upon Defendants mailing a copy
21 of the Voluntary Resignation Agreement to Gretchen McCoy at SRS,
22 at P.O. Box 591, Burbank, CA constitutes second count of mail
23 fraud, as it was initiated to further the Scheme.

24 THIRD COUNT OF MAIL FRAUD

1 47. On or around May 2, 2007 upon Defendants mailing a copy
2 of the Voluntary Resignation Agreement to Mark Antoine Foster at
3 725 Ellis Street, San Francisco, CA., constitutes a third count
4 of mail fraud, as it was initiated to further the Scheme.

5 FOURTH COUNT OF MAIL FRAUD

6 48. On or around July 3, 2007 upon Defendants mailing a
7 copy of the opposition to Plaintiff's Declaration of Readiness
8 to Proceed to the Worker's Compensation Appeals Board
9 constitutes a Fourth Count of MAIL FRAUD, as it was initiated to
10 further the Scheme.

11 FIFTH COUNT OF MAIL FRAUD

12 49. On or around July 3, 2007 upon Defendants mailing a
13 copy of the opposition to Plaintiff's Declaration of Readiness
14 to Proceed Mary Lou Williams at 4104 24th Street, San Francisco,
15 CA 94104 constitutes a Fifth Count of MAIL FRAUD, as it was
16 initiated to further the Scheme.

17 SIXTH COUNT OF MAIL FRAUD

18 50. On or around July 3, 2007 upon Defendants mailing a
19 copy of the opposition to Plaintiff's Declaration of Readiness
20 to Proceed Gretchen Devine at Specialty Risk Services at P.O.
21 Box 591, Burlingame, CA constitutes a Sixth Count of MAIL FRAUD,
22 as it was initiated to further the Scheme.

23 51. As a proximate result of the fraudulent conduct or the
24 defendants as herein alleged, plaintiff was subjected to Fraud
25

1 and Intentional Deceit and Mail Fraud that or caused him
2 emotional distress and mental anguish.

3 52. The aforementioned conduct of defendants was an
4 intentional misrepresentation, deceit, or concealment of a
5 material fact know to the defendants with the intention on the
6 part of the defendants of to deprive the plaintiff of property
7 or legal rights, causing injury, and was despicable conduct that
8 subjected plaintiff to a cruel unjust hardship in conscious
9 disregard of the plaintiff's rights, so as to justify an award
10 of exemplary and punitive damages.

11 53. Defendants' attempt to defraud plaintiff violated
12 section 1572 of the California Civil Code. Plaintiff is
13 therefore entitled to Statutory Damages, Costs and award of
14 Attorney fees.

15 Wherefore Plaintiff prays for judgment against Defendants
16 as more fully set forth below.

17 THIRD CAUSE OF ACTION

18 CONSPIRACY TO DEFRAUD

19 (18 U.S.C. SECTION §1345, §1349)

20 54. Plaintiff realleges and incorporates therein by
21 reference every allegation stated herein.

22 55. Plaintiff is informed, believes and therefore alleges
23 that between March 9, 2007 and May 1, 2007 Defendants and members
24 of Aramark's Management conspired to defraud plaintiff by

1 attempting to cover-up a "would be" Disability Discrimination
2 Claim and wrongful termination Claim pursuant to the ADA, the
3 UNRUH and FEHA.

4 56. Plaintiff is informed, believes and therefore alleges
5 that Aramark's managers conspired and with their council, both
6 Gray & Prouty and Morgan & Lewis to submit and offer the
7 Voluntary Resignation Agreement to plaintiff, on May 2, 2007,
8 knowing it was being submitted for fraudulent reasons.

9 57. Defendants conspiring to defraud plaintiff violated
10 California Civil Codes 1709, 1710 and 1572 and 18 U.S.C. Section
11 1345, and 1349.

12 58. As a proximate result of the fraudulent conduct of the
13 defendants as herein alleged, plaintiff was subjected to fraud
14 and intentional deceit and MAIL FRAUD, causing plaintiff to
15 suffer emotional stress.

16 59. The aforementioned conduct of defendants was an
17 intentional misrepresentation deceit, or concealment of a
18 material fact know to the defendants with the intention on the
19 part of the defendants of thereby depriving the plaintiff of
20 property or legal rights causing injury, and was despicable
21 conduct that subjected plaintiff to a cruel unjust hardship in
22 conscious disregard of the plaintiff's rights, so as to justify
23 an award of exemplary and punitive damages.

24 Wherefore Plaintiff prays for judgment against Defendants
25

1 as more fully set forth below.

2 FOURTH CAUSE OF ACTION

3 WIRE FRAUD

4 18 U.S.C. SECTION 1343

5 60. Plaintiff realleges and incorporates therein by
6 reference every allegation stated herein.

7 61. Plaintiff is informed, believes and therefore alleges
8 that between March 9,2007 and May 2,2007, Defendants and members
9 of Aramark Management utilized emails, the telephone or by fax
10 to further their Scheme to defraud Plaintiff by attempting to
11 cover-up a "would be" disability discrimination claim and
12 wrongful termination Claim pursuant to the ADA, the UNRUH and
13 FEHA.

14 62. Plaintiff is informed, believes and therefore alleges
15 that between March 9,2007 and May 2,2007, Defendants and members
16 of Management of Aramark conspired with their council Gray &
17 Prouty and Morgan & Lewis to submit the offer to plaintiff in
18 the form of the agreement.

19 63. Defendant's use of the above mentions methods of
20 Communication to defraud plaintiff violated Section California
21 Civil Codes 1709, 1710 and 18 U.S.C. Section 1343.

22 64. As a proximate result of the Fraudulent conduct or the
23 defendants as herein alleged, Plaintiff was subjected to Fraud
24 and Intentional Deceit and ^{Wire}MAIL FRAUD, causing plaintiff

1 emotional stress.

2 65. The aforementioned conduct of defendants was an
3 intentional misrepresentation, deceit, or concealment of a
4 material fact know to the defendants with the intention on the
5 part of the defendants, thereby depriving the plaintiff of
6 property or legal rights causing injury to plaintiff, and was
7 despicable conduct that subjected plaintiff to a cruel unjust
8 hardship in conscious disregard of the plaintiff's rights, so as
9 to justify an award of exemplary and punitive damages.

10 Wherefore Plaintiff prays for judgment against Defendants
11 as more fully set forth below.

12 FIFTH CAUSE OF ACTION

13 BREACH OF FUDICIARY DUTY

14 66. Plaintiff realleges and incorporates therein by
15 reference every allegation stated herein.

16 67. Defendants, as attorneys, breached their fiduciary
17 duty, as attorneys, they were negligent in their duties and
18 behaved in a way that was despicable due to them being attorneys
19 having a duty of care to uphold the law, knowing they were
20 helping break the law. Defendants knew the acts being committed
21 were being done for fraudulent reasons and still allowed
22 themselves to conspire with their clients to help defraud
23 plaintiff. Defendants recognized the risks created by their
24 actions and Aramark actions and understood what could happen

1 from those risks taken.

2 68. Plaintiff alleges that defendants knew all details
3 regarding plaintiff's employment with their client Aramark,
4 including knowing when plaintiff actually resigned and why.
5 Defendants knew requesting and coercing plaintiff to sign the
6 agreement presented on May 2, 2007 was to void out the original
7 agreement plaintiff signed on March 28, 2006 to help shield
8 their client Aramark from a possible discrimination claim from
9 plaintiff.

10 69. Plaintiff alleges that professional attorneys are held
11 to a higher standard of care than an ordinary reasonable person
12 would be. Attorneys must behave as a reasonable attorney would
13 do so rather than a reasonable person. The perspective of an
14 attorney would be different matters in the court. Defendants
15 Morgan and Lewis, and Eric Meckley owe plaintiff a reasonable
16 standard of care.

17 70. Plaintiff alleges that the defendants' acts breached
18 their fiduciary duty violating section §3300 of the California
19 Civil Code.

20 71. As a direct and proximate result of said breach,
21 plaintiff has suffered the actual and special and general
22 damages as alleged, and which are incorporated herein by this
23 reference, and seek recovery of the same, and for an award of
24 costs and reasonable attorney fees.

1 72. Plaintiff alleges that the defendants' breach was
2 committed to defraud plaintiff and was in conscious disregard of
3 plaintiff's rights and was willful, oppressive and malicious;
4 and designed to cause plaintiff to suffer economic and emotional
5 injury. Plaintiff is therefore entitled to an award of exemplary
6 and punitive damages against defendants, in an amount to be
7 determined at trial.

8 Wherefore Plaintiff prays for judgment against Defendants
9 as more fully set forth below.

10 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

11 73. Plaintiff realleges and incorporates therein by
12 reference every allegation stated herein.

13 74. The fraudulent actions of defendants were outrageous,
14 intentional and malicious and done with reckless disregard of
15 the fact that they would certainly cause plaintiff to suffer
16 severe emotional and physical distress. Defendants knew that
17 defrauding plaintiff in an attempt to deprive from his "would
18 be" Disability Discrimination Claim would certainly cause him to
19 suffer severe emotional and physical distress. Defendants also
20 knew Plaintiff had already suffered psychological injury due to
21 the previous acts of the Aramark while Plaintiff was employed at
22 the Carnelian Room, but still proceeded with their Fraudulent
23 acts after Plaintiff resigned or was constructively Discharged.

24 75. As a proximate result of the acts of defendants,
25

1 Plaintiff has and will more than likely continue to suffer
2 emotional distress in the form of fear, anxiety, worry, and
3 mental suffering as the injury will have an effect on
4 Plaintiff's future capacity to work and earn income.

5 76. Plaintiff will seek more psychological counseling as a
6 result of the defendants conduct.

7 77. As a proximate result of Defendants conduct, Plaintiff
8 has suffered general Damages in an amount to be determined by
9 Proof at Trial.

10 78. Defendants conduct was done knowingly, willfully and
11 with malicious intent and Plaintiff can prove the fraudulent
12 acts of Defendants by "clear and convincing" evidences and
13 therefore Plaintiff is entitled o Punitive Damages in an amount
14 to be determined by Proof at trial.

15 Wherefore Plaintiff prays for judgment against Defendants
16 as more fully set forth below.

17 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

18 79. Plaintiff realleges and incorporates therein by
19 reference every allegation stated herein.

20 80. Plaintiff is informed, believes and therefore alleges
21 that Defendant Morgan and Lewis is negligent in causing
22 plaintiff Emotional Distress, in that Defendant Morgan and Lewis
23 has breached their duty of care by allowing themselves as
24 attorneys and their client Aramark to intentionally inflict
25

1 Plaintiff with Emotional Distress causing Plaintiff injury
2 resulting in damages. Defendants' negligence causing of
3 Emotional Distress is not an independent Tort: it is a Tort of
4 Negligence.

5 81. As a proximate result of the fraudulent conduct of
6 the defendants as herein alleged, plaintiff was injured
7 emotionally and mentally suffering damage

8 Wherefore Plaintiff prays for judgment against Defendants
9 as more fully set forth below.

10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiff FOSTER prays for judgment against
12 defendants, and each of them, as more fully set forth below:

- 13 1. For general damages, including emotional distress,
14 according to proof;
- 15 2. For statutory penalties and all relief allowed by
16 statute according to proof;
- 17 3. For punitive damages;
- 18 4. For an award of attorney's fees;
- 19 5. For pre-judgment interest at the legal rate according to
20 proof;
- 21 6. For costs of suit incurred;
- 22 7. For such other and further relief as the court may deem
23 proper.

24 Dated:

February 7, 2008

Mark A. Foster

Mark Antoine Foster, In Pro Per

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SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: MORGAN LEWIS & BOKIUS LLP
(AVISO AL DEMANDADO): AND ERIC MECKLEY AS
An Individual and Does
1 through 81

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARK ANTOINE ROSTER

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: SUPERIOR COURT
(El nombre y dirección de la corte es): 400 MCALLISTER STREET RM 103
SAN FRANCISCO CA 94102

CASE NUMBER:
(Número del Caso):

668-08-471937

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MARK ANTOINE ROSTER 415-756 1611
200 CORPUS CRISTU RD #1

D. STEPPE

DATE: Alameda CA 94601 Clerk, by _____, Deputy
(Fecha) FEB 07 2008 (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

[SEAL]

Page 1 of 1

EXHIBIT 2

**ENDORSED
FILED**
Superior Court of California
County of San Francisco

FEB 07 2008

GORDON PARK-LI, Clerk
BY: DEBORAH STEPPE
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JUL 11 2008 - 9⁰⁰ AM

DEPARTMENT 212

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CIVIL UNLIMITED JURISDICTION

CGC-08-471939

**COMPLAINT FOR DAMAGES FOR
CIVIL RIGHTS (related to
Employment discrimination)**

MARK ANTOINE FOSTER,

Plaintiff,

vs.

SPECIALTY RISK SERVICES, AND
GRETCHEN DEVINE, as an individual,
and DOES 1 through
91

Defendants

1. Fraud and Intentional Deceit
2. Intentional Misrepresentation of Fact
3. Negligent Misrepresentation
4. Suppression of Fact
5. Mail Fraud (18 U.S.C. Sec. §1341)
6. Conspiracy to Mail Fraud (18 U.S.C. Sec. §1345, §1349)
7. Wire Fraud (18 U.S.C. Sec. §1343)
8. Breach of Fiduciary Duty
9. Intentional Infliction of Emotional Distress
10. Negligent Infliction of Emotional Distress

INTRODUCTION

This case is brought against defendants pursuant to California Codes of Civil Procedure §1709, §1710 and §1572 for committing acts that constitute fraud and intentional deceit, mail fraud and wire fraud and conspiracy to defraud. Defendant

1 SPECIALTY RISK SERVICES and its employee GRETCHEN DEVINE
2 conspired with their clients Aramark Sports, L.L.C. and Aramark
3 Corporation to defraud plaintiff of his disability
4 discrimination claim against defendant Aramark Corporation. The
5 acts were committed to shield their client from a "would be"
6 claim of disability discrimination claim and deprive plaintiff
7 of any monetary damages that would be awarded to plaintiff as a
8 result. Defendant's acts were related to plaintiff's previous
9 employment with ARAMARK, as defendants committed these
10 acts after plaintiff's employment with the defendants ended.

11 Although the acts were committed after plaintiff's
12 employment ended, the acts were connected to claims plaintiff
13 alleged in a previous complaint plaintiff filed against
14 ARAMARK in San Francisco Superior Court on March 9, 2007.
15 These acts show a continuing pattern of further deprivation of
16 plaintiff's civil rights by defendants.

17 The connected case number 07461178, which alleges acts that
18 were committed by defendants while plaintiff was employed with
19 the ARAMARK has been presently removed to federal court by
20 ARAMARK on January 30, 2008 in an attempt to delay trial and
21 prosecution of the case in state court. Plaintiff will file a
22 motion for remand in federal court to have the case moved back
23 to state court within 30 days of its removal.

24 ARAMARK stated to the court in their case management
25 conference statement that they would file a motion for summary

1 judgment or as an alternative a motion for summary adjudication
2 but instead, upon discovering that plaintiff has acquired enough
3 evidence to support his claims through his own discovery plan,
4 defendants removed the case to federal court in an attempt to
5 divert plaintiff and gather their thoughts as to how they want
6 and should settle the case.

7 Plaintiff will also file a second amended complaint
8 adding claims alleging Wrongful Termination, additional
9 retaliation that resulted in Fraud and Intentional Deceit,
10 Suppression of Fact, and to change quid pro quo sexual
11 harassment to hostile work environment sexual harassment.

12 Plaintiff will also file a supplemental complaint alleging
13 continued retaliation after plaintiff filed his complaint on
14 March 9, 2007.

15 PARTIES

16 1. Plaintiff Mark Antoine Foster was an employee of
17 defendant Speciality Risk Services client Aramark Sports and
18 Entertainment, a subsidiary of Aramark Corporation. He worked
19 for the Carnelian Room located at 555 California Street, San
20 Francisco, California.

21 2. Defendants does 1 through 91, inclusive, are sued
22 under fictitious names. Their true names and capacities are
23 unknown to plaintiff. When their true names and capacities are
24 ascertained, plaintiff will amend this complaint by inserting
25 their true names and capacities herein. Plaintiff is informed

1 and believes and thereon alleges that each of the fictitiously
2 named defendants is responsible in some manner for the
3 occurrences herein alleged, and such defendants caused plaintiff
4 damages as herein alleged.

5 3. Plaintiff is informed and believes, and thereon
6 alleges, that at all times herein mentioned each and every
7 defendant was the agent, servant, employee and/or representative
8 of each other defendant and was, in doing the things complained
9 of herein, acting within the scope of said agency, service,
10 employment and or representation, and that each and every
11 defendant herein is jointly and severally responsible and liable
12 to plaintiff for the damages hereinafter alleged.

13 JURISDICTION AND VENUE

14 4. Jurisdiction is proper in this court as the acts
15 complained of occurred in San Francisco,
16 California.

17 5. The amount in controversy exceeds limited
18 jurisdiction.

19 6. Plaintiff timely files this complaint, as he
20 discovered the fraudulent acts of the defendants in
21 December 2007.

22 7. Plaintiff will amend this complaint to allege those
23 causes of action once defendants respond to the claim.

24 **FIRST CAUSE OF ACTION**
FRAUD AND INTENTIONAL DECEIT
(California Civil Codes 1709, 1710 and 1572)
25 **FIRST COUNT**

INTENTIONAL MISREPRESENTATION OF FACT

8. Plaintiff realleges and incorporates herein by reference every allegation stated herein.

9. Plaintiff is informed, believes and therefore alleges that the defendants' acts constituted fraud and intentional deceit due to the defendants attempting to help their client cover-up a possible or would-be disability discrimination claim from plaintiff, in the event plaintiff discovered that Aramark discriminated against him due to his disability.

10. On or around March 28, 2006, plaintiff requested a medical leave from the Aramark due to work related stress allegedly caused by two of the Aramarks' supervisor/managers. On or around March 28, 2006, plaintiff signed an voluntary resignation agreement stating he would return no later than June 15, 2006 and that if he did not return by June 15, 2006, his absence would be considered a voluntary quit and he will be terminated on that day.

11. On or around June 15, 2006, plaintiff did not return to work due to (1) still being disabled and (2) due to fear of further retaliation from ~~ARAMARK~~, and (3) due to fear of being terminated once he did return to work for Aramark.

12. Plaintiff is informed, believes and therefore alleges that he was forced to resign on June 15, 2006 pursuant to the voluntary resignation agreement he signed on March 28, 2006, absent Aramark offering plaintiff a further reasonable

1 accommodation to his disability before allowing him to "
2 voluntarily quit", as voluntary quit in this case is voluntary
3 termination which results in its simple form - termination of
4 employment.

5 13. On or around March 9, 2007, plaintiff filed a
6 complaint against defendants Aramark Sports, LLC, and Ying Kee
7 McVicker and Mathew Lee as individuals, alleging Retaliation,
8 Harassment, Constructive Discharge, Failure to Prevent
9 Harassment, and Intentional Infliction of Emotional Distress.
10 Plaintiff did not in this complaint allege Disability
11 Discrimination due to not knowing his was or had been subject to
12 disability Discrimination at that point in time. Plaintiff
13 discovered in January 2008 that he had been subject to
14 disability discrimination on June 15, 2006.

15 14. Plaintiff alleges that sometime in Feb. 2007, he
16 requested his employee records from Aramark, specifically
17 Aramark's HR Manager, James Chan. Mr. Chan released plaintiff's
18 employee records which contained a copy of the voluntary
19 resignation agreement dated March 28, 2006 plaintiff signed
20 agreeing to return on June 15 2006. On the Face of the Voluntary
21 Resignation Agreement was a notation made by James Chan stating
22 that he communicated with the Executive Chef regarding plaintiff
23 not returning to work on June 15, 2006. Plaintiff alleges that
24 this is evidence that he was terminated pursuant to the
25

1 voluntary resignation agreement, in addition to the fact that
2 the mere existence of the voluntary resignation agreement shows
3 plaintiff was more than likely terminated pursuant to it.

4 15. On or around August 28, 2007, plaintiff served Aramark
5 a request for documents demanding all documents relevant to his
6 termination; instead of Aramark producing the same documents he
7 received from James Chan before he filed his lawsuit ~~ARAMARK~~
8 presented another version of the voluntary resignation without
9 the notation of James Chan on the face of the agreement. This
10 shows defendants withheld evidence.

11 16. On or around December 20, 2007, plaintiff realized
12 through research that he had been subject to Disability
13 Discrimination and in December 2007, filed a motion to amend his
14 complaint to add Disability Discrimination under the ADA, UNRUH
15 and FEHA. Defendants stipulated with plaintiff to allow the
16 amendment.

17 17. On or Around Jan 15, 2008, Plaintiff discovered
18 through his Discovery served on Aramark that he was defrauded by
19 defendants, as defendants conspired with their clients to help
20 cover up or attempt to cover-up the fact that they had
21 discriminated against plaintiff due to his mental disability.

22 18. On or around May 2, 2007, defendants with their client
23 Aramark and their clients' Worker's compensation Attorneys Gray
24 and Prouty, requested from plaintiff that he agree and sign a
25

1 document stating that he voluntarily resigned on May 1, 2007.
2 The purpose for defendants' request was to allow the proposed
3 agreement to void out the agreement signed on March 28, 2006, as
4 this agreement is the initial and actual reason why plaintiff
5 was terminated: which was when plaintiff was forced to resign
6 due to his disability violating ADA, the Unruh and FEHA.

7 19. Defendants and their client Aramark submitted the
8 agreement to plaintiff for his signature. Plaintiff then refused
9 to agree that he resigned on May 1, 2007, knowing that he
10 resigned on June 15, 2006, pursuant to the agreement signed on
11 March 28, 2006.

12 20. Defendants insisted that plaintiff sign the agreement
13 prior to releasing his already agreed upon Worker's Compensation
14 settlement of \$5,500. Plaintiff altered the date and signed the
15 agreement as voluntarily resigning on June 15, 2006, not May 1,
16 2007 as Defendants requested he do. Although plaintiff did not
17 sign the agreement as voluntarily resigning on May 1, 2007, he
18 did sign agreeing that he *voluntarily resigned* on June 15, 2006.
19 Even though defendants were not successful in getting plaintiff
20 to agree that he resigned on May 1, 2007, they planned to use
21 the agreement anyway to void out the original agreement signed
22 on March 28, 2006. Defendants and their client Aramark planned
23 to use the new agreement to say that plaintiff resigned on June
24 15, 2006, to give the impression that he voluntarily resigned on
25

1 his own on June 15, 2006, and not pursuant to the agreement he
2 signed on March 28, 2006, to shield themselves from disability
3 discrimination. Although the mere existence of any voluntary
4 agreement plaintiff signed in May 2007, or anytime thereafter,
5 is a fraud.

6 21. Plaintiff is informed believes and therefore alleges
7 that the defendants made a false representation offering the
8 voluntary resignation agreement. The true facts being; Aramark
9 forced plaintiff to resign pursuant to the voluntary resignation
10 agreement he signed on March 28, 2006, and defendants and Aramark
11 were attempting to suppress this material fact. Defendants
12 requesting plaintiff to sign the agreement presented on May 2,
13 2007 was FRAUD in its purest Form. Defendants Specialty Risk
14 Services abused their position as worker's compensation carriers
15 and helped their client Aramark use the agreed upon settlement
16 of \$5,500 to coerce plaintiff to sign the agreement, which would
17 cause plaintiff to defraud his own self. Plaintiff signed the
18 agreement and returned it, as this proves that the FRAUD reached
19 its full Fruition or Justifiable reliance, damaging plaintiff
20 even further.

21 22. Plaintiff alleges that it was a misrepresentation of
22 Material Fact by Defendants to request plaintiff to agree and
23 sign an agreement stating that his voluntary resignation was on
24 a date after he had already voluntarily resigned in an attempt
25

1 to cover up a possible disability discrimination claim against
2 their clients.

3 23. Defendants attempt to use the document to void out his
4 original resignation agreement signed on March 28, 2006 was
5 despicable conduct done with malice. Defendants attempted to
6 help their clients defraud Plaintiff of his rightful claim of
7 disability discrimination and the tangible and intangible
8 benefits representing monetary and other remedy for damages that
9 could be awarded due to the disability claim. This act is
10 clearly an intentional misrepresentation of Material Fact.

11 24. When the Defendants made the representations, they
12 knew then to be false or were based on false pretenses or
13 misrepresentations, as the defendants made these representations
14 with the intention to deceive and defraud plaintiff and to
15 induce plaintiff to act in reliance on these representations in
16 the manner alleged, or with the expectation that plaintiff would
17 so act. Defendants expected plaintiff to sign the agreement so
18 he could receive his WC Settlement of \$5,500 and coerced him to
19 sign the agreement before agreeing to release payment of the
20 \$5,500 to him.

21 25. Plaintiff at the time these representations were made
22 by Defendants, believed that the Defendants representations were
23 true. Due to believing, plaintiff thought it was acceptable or
24 all right to sign the document, and that it was not depriving
25

1 him of any further rights and that there was a legal forthright
2 reason for defendants requesting him to sign the voluntary
3 agreement. Aramark and the defendants abused their positions as
4 reputable third party administrators, to help present the
5 document as if it was legal when actually it was not, as this
6 shows that plaintiff's reliance on defendant representation was
7 justified.

8 26. Plaintiff alleges that he has satisfied all the
9 elements for intentional misrepresentations, which includes: (1)
10 misrepresentations (2) Material Fact (3) Knowledge of Falsity
11 (4) Intent to induce reliance (5) Justifiable reliance and (6)
12 Causation and Damages

13 27. Defendants attempt to defraud Plaintiff violated
14 California Civil Codes 1709, 1710, and 1572

15 28. As a proximate result of the fraudulent conduct or the
16 defendants as herein alleged, plaintiff was subjected to Fraud
17 and Intentional Deceit that subject or caused him emotional
18 distress and mental anguish.

19 29. The aforementioned conduct of defendants was an
20 intentional misrepresentation, deceit, or concealment of a
21 material fact know to the defendants with the intention on the
22 part of the defendants to deprive the plaintiff of property or
23 legal rights, causing injury, and was despicable conduct that
24 subjected plaintiff to a cruel unjust hardship in conscious
25

1 disregard of the plaintiff's rights, so as to justify an award
2 of exemplary and punitive damages.

3 SECOND COUNT

4 Negligent Misrepresentation

5 30. When the defendants made the representation they had
6 no reasonable grounds for believing them to be true. Defendants
7 knew that (1) it was not necessary for Plaintiff to sign the
8 Agreement at all (2) it was not necessary for plaintiff to sign
9 the agreement as a condition to him receiving or defendants
10 releasing plaintiff already agreed upon worker's compensation
11 settlement of \$5,500.

12 31. Plaintiff alleges that the defendants made the
13 representation with intent to induce plaintiff to rely upon it.

14 32. Plaintiff alleges that he was unaware of the falsity
15 of the representation; in that he did not know that the purpose
16 or the agreement was to shield Aramark from a possible
17 discrimination disability claim from plaintiff, depriving
18 plaintiff of any possible monetary damages from the claim.

19 33. Plaintiff alleges that he acted in reliance upon the
20 truth of the representation; as in him thinking it was necessary
21 to sign the agreement, as he believed it to be safe or true
22 because it was presented to him by ARAMARK'S worker's
23 compensation attorney. Plaintiff believed it to be true because
24 he knew Defendants as well as Aramark's Worker's Compensation
25

1 disregard of the plaintiff's rights, so as to justify an award
2 of exemplary and punitive damages.

3 SECOND COUNT

4 Negligent Misrepresentation

5 30. When the defendants made the representation they had
6 no reasonable grounds for believing them to be true. Defendants
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8 Agreement at all (2) it was not necessary for plaintiff to sign
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15 of the representation; in that he did not know that the purpose
16 or the agreement was to shield Aramark from a possible
17 discrimination disability claim from plaintiff, depriving
18 plaintiff of any possible monetary damages from the claim.

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20 truth of the representation; as in him thinking it was necessary
21 to sign the agreement, as he believed it to be safe or true
22 because it was presented to him by ARAMARK'S worker's
23 compensation attorney. Plaintiff believed it to be true because
24 he knew Defendants as well as Aramark's Worker's Compensation
25

1 Attorneys knew exactly when Plaintiff actually resigned or knew
2 Plaintiff resigned on June 15, 2006 pursuant to the March 28,
3 2006 agreement.

4 34. Defendants initiating these actions in an attempt to
5 DEFRAUD plaintiff of his claim of disability discrimination and
6 any possible monetary damages that would be awarded in lieu of
7 the disability discrimination claim violating California Codes
8 1572, 1709 and 1710, Therefore Plaintiff is entitled to
9 Statutory Damages, Costs and awards of Attorney Fees.

10 THIRD COUNT

11 Suppression of Fact

12 35. Plaintiff alleges that defendants suppressed the fact
13 that if was not necessary for plaintiff to agree and sign the VR
14 agreement to receive his WC Check.

15 36. In addition on or around July 2, 2007, defendants'
16 Attorney Dana Mitchell filed an opposition to plaintiff's
17 Readiness to Proceed. In the opposition, Defendants state or
18 implied that the reason plaintiff's settlement of \$5,500 had not
19 been paid was due to plaintiff filing an EEOC Claim subsequent
20 to agreeing to the settlement of \$5,500 with defendants.
21 Plaintiff believes defendants lied to the Worker's Compensation
22 Appeals Board to create a "Smoke screen" or cover up as to the
23 actual reason plaintiff's settlement was held up, which was
24 defendants wanting to force plaintiff to sign the agreement to
25

1 shield them from the disability discrimination claim. Defendants
2 concealed from the Worker's Compensation Appeals Board that
3 there was no EEOC Claim filed by plaintiff subsequent to the
4 agreement of the worker's compensation Settlement.

5 37. The defendants made the failure to disclose and
6 suppressed and/or concealed the information mentioned herein
7 alleged, with the intent to induce the plaintiff to act in the
8 manner herein alleged in reliance thereupon, with the intent to
9 cause plaintiff to sign the agreement.

10 38. As a proximate result of the fraudulent conduct or the
11 defendants as herein alleged, plaintiff was subjected to Fraud
12 and Intentional Deceit that subject or caused him emotional
13 distress and mental anguish.

14 39. The aforementioned conduct of defendants was an
15 intentional misrepresentation, deceit, or concealment of a
16 material fact know to the defendants with the intention on the
17 part of the defendants of to deprive the plaintiff of property
18 or legal rights, causing injury, and was despicable conduct that
19 subjected plaintiff to a cruel unjust hardship in conscious
20 disregard of the plaintiff's rights, so as to justify an award
21 of exemplary and punitive damages.

22 40. Defendants' attempt to defraud plaintiff violated
23 section 1572 of the California Civil Code. Plaintiff is
24 therefore entitled to Statutory Damages, Costs and award of
25

1 Attorney fees.

2 Wherefore Plaintiff prays for judgment against Defendants
3 as more fully set forth below.

4 FOURTH COUNT

5 SUPPRESSION OF FACT

6 41. Plaintiff realleges and incorporates therein by
7 reference every allegation stated herein.

8 42. Plaintiff is informed, believes and therefore alleges
9 that defendants suppressed the fact that they knew plaintiff was
10 certified disabled and receiving state disability payments and
11 on medical leave when he filed his claim for worker's
12 compensation benefits. Defendants knew this was justifiable
13 evidence that plaintiff was injured and eligible to receive
14 worker's compensation benefits for his injury.

15 43. Plaintiff is informed, believes and therefore alleges
16 that the defendants Specialty Risk Services on May 2, 2006
17 unjustly denied his claim, and there employer level
18 investigation of his claim failed, as it was incomplete or
19 insufficient in discovering that plaintiff was injured on the
20 job.

21 44. Plaintiff alleges that defendants knew all details
22 regarding plaintiff's employment with their client Aramark, and
23 knew plaintiff filed complaints against two members of their
24 management staff prior to denying his claim.

45. Plaintiff alleges that defendants knew or should have known or was negligent at the least and in conscious disregard of plaintiff's rights to his claim, breaching their fiduciary duty to properly investigate plaintiff's claim.

46. As a proximate result of defendants' suppression of fact, plaintiff has suffered emotional distress and mental anguish.

47. The aforementioned conduct of defendants was an intentional misrepresentation, deceit, or concealment of a material fact known to the defendants with the intention on the part of the defendants of to deprive the plaintiff of property or legal rights, causing injury, and was despicable conduct that subjected plaintiff to a cruel unjust hardship in conscious disregard of the plaintiff's rights, so as to justify an award of exemplary and punitive damages.

Wherefore Plaintiff prays for judgment against Defendants
as more fully set forth below.

FIFTH COUNT

SUPPRESSION OF FACT

48. Plaintiff realleges and incorporates therein by reference every allegation stated herein.

49. Plaintiff is informed, believes and therefore alleges that defendants suppressed from there parent company the prestigious Hartford Insurance Companies based in Connecticut,

1 the fact that they unjustly denied plaintiff's claim for
2 worker's compensation benefits and the fact that they lied to
3 the Worker's Compensation Appeals Board in San Francisco
4 regarding plaintiff's claim.

5 50. Plaintiff alleges that defendants knew or should have
6 known or was negligent at the least and in conscious disregard
7 of plaintiff's rights to his claim, breaching their fiduciary
8 duty to properly investigate plaintiff's claim.

9 51. As a proximate result of defendants' suppression of
10 fact, plaintiff has suffered emotional distress and mental
11 anguish.

12 52. The aforementioned conduct of defendants was an
13 intentional misrepresentation, deceit, or concealment of a
14 material fact know to the defendants with the intention on the
15 part of the defendants of to deprive the plaintiff of property
16 or legal rights, causing injury, and was despicable conduct that
17 subjected plaintiff to a cruel unjust hardship in conscious
18 disregard of the plaintiff's rights, so as to justify an award
19 of exemplary and punitive damages.

20 Wherefore Plaintiff prays for judgment against Defendants
21 as more fully set forth below.

22 SECOND CAUSE OF ACTION

23 Mail Fraud (18 U.S.C. Section 1341)

24 53. Plaintiff realleges and incorporates therein by
25

1 reference every allegation stated herein.

2 54. On or around May 2, 2007 Defendants mailed to
3 Plaintiff by way of his Worker's Compensation Attorney Mary Lou
4 Williams, the voluntary agreement, which was the execution of a
5 scheme to defraud plaintiff.

6 55. Title 18 - Crimes and Criminal Procedures, Part 1 -
7 Crimes Chapter 63 section 1341 Frauds and Swindles States:
8 Whoever, having devised or intending to devise any scheme or
9 artifice to defraud, or for obtaining money or property by means
10 of false or fraudulent pretenses, representations, or promises,
11 or to sell, dispose of, loan, exchange, alter, give away,
12 distribute, supply, or furnish or procure for unlawful use any
13 counterfeit or spurious coin, obligation, security, or other
14 article, or other article, or anything represented to be or
15 intimated or held out to be such counterfeit or spurious
16 article, for the purpose of executing such scheme or artifice or
17 attempting so to do, places in any post office or authorized
18 depository for mail matter, any matter or thing whatever to sent
19 or delivered by the Postal Service, or Deposits or causes to be
20 deposited any matter or thing whatever to sent or delivered by
21 any private or commercial interstate carrier, or takes or
22 receives therefrom, any such matter or thing, or knowingly
23 causes to be delivered by mail or such carrier according to the
24 direction thereon, or at the place at which it is directed to be

25

1 delivered by the person to whom it is addressed, any such matter
2 or thing shall be fined under this title or shall be fined under
3 this title or imprisoned not more than 20 years, or both.

4 56. Upon Defendants placing the Voluntary Resignation Agreement
5 in the Post Office for Mail matter to be sent by the Postal
6 Service, the Defendants committed Mail Fraud.

7 FIRST COUNT OF MAIL FRAUD

8 56. On or around May 2, 2007 upon Defendants mailing the
9 Voluntary Resignation Agreement to Mary Lou Williams at 4104 24th
10 Street, San Francisco, CA 94104 constitutes first count of mail
11 fraud.

12 SECOND COUNT OF MAIL FRAUD

13 57. On or around May 2, 2007 upon Defendants mailing a copy
14 of the Voluntary Resignation Agreement to Gretchen McCoy at SRS,
15 at P.O. Box 591, Burbank, CA constitutes second count of mail
16 fraud, as it was initiated to further the Scheme.

17 THIRD COUNT OF MAIL FRAUD

18 58. On or around May 2, 2007 upon Defendants mailing a copy
19 of the Voluntary Resignation Agreement to Mark Antoine Foster at
20 225 Ellis Street, San Francisco, CA., constitutes a third count
21 of mail fraud, as it was initiated to further the Scheme.

22 FOURTH COUNT OF MAIL FRAUD

23 59. On or around July 3, 2007 upon Defendants mailing a
24 copy of the opposition to Plaintiff's Declaration of Readiness
25

1 to Proceed to the Worker's Compensation Appeals Board
2 constitutes a Fourth Count of MAIL FRAUD, as it was initiated to
3 further the Scheme.

4 FIFTH COUNT OF MAIL FRAUD

5 60. On or around July 3, 2007 upon Defendants mailing a
6 copy of the opposition to Plaintiff's Declaration of Readiness
7 to Proceed Mary Lou Williams at 4104 24th Street, San Francisco,
8 CA 94104 constitutes a Fifth Count of MAIL FRAUD, as it was
9 initiated to further the Scheme.

10 SIXTH COUNT OF MAIL FRAUD

11 61. On or around July 3, 2007 upon Defendants mailing a
12 copy of the opposition to Plaintiff's Declaration of Readiness
13 to Proceed Gretchen Devine at Specialty Risk Services at P.O.
14 Box 591, Burlingame, CA constitutes a Sixth Count of MAIL FRAUD,
15 as it was initiated to further the Scheme.

16 62. As a proximate result of defendants' suppression of
17 fact, plaintiff has suffered emotional distress and mental
18 anguish.

19 63. The aforementioned conduct of defendants was an
20 intentional misrepresentation, deceit, or concealment of a
21 material fact know to the defendants with the intention on the
22 part of the defendants of to deprive the plaintiff of property
23 or legal rights, causing injury, and was despicable conduct that
24 subjected plaintiff to a cruel unjust hardship in conscious
25

1 disregard of the plaintiff's rights, so as to justify an award
2 of exemplary and punitive damages.

3 Wherefore Plaintiff prays for judgment against Defendants
4 as more fully set forth below.

5 THIRD CAUSE OF ACTION

6 CONSPIRACY TO DEFRAUD

7 (18 U.S.C. SECTION 1345,1349)

8 64. Plaintiff realleges and incorporates therein by
9 reference every allegation stated herein.

10 65. Plaintiff is informed, believes and therefore alleges
11 that between March 9,2007 and May 1, 2007 Defendants and members
12 of Aramark's Management conspired to defraud plaintiff by
13 attempting to cover-up a "would be" Disability Discrimination
14 Claim and wrongful termination Claim pursuant to the ADA, the
15 UNRUH and FEHA.

16 66. Plaintiff is informed, believes and therefore alleges
17 that Aramark's managers conspired and with defendants to submit
18 and offer the Voluntary Resignation Agreement to plaintiff, on
19 May 2,2007, knowing it was being submitted for fraudulent
20 reasons.

21 67. Defendants conspiring to defraud plaintiff violated
22 California Civil Codes 1709, 1710 and 1572 and 18 U.S.C. Section
23 1345, and 1349.

24 68. As a proximate result of the fraudulent conduct of the
25

1 defendants as herein alleged, plaintiff was subjected to fraud
2 and intentional deceit and MAIL FRAUD causing plaintiff
3 emotional distress.

4 69. The aforementioned conduct of defendants was an
5 intentional misrepresentation deceit, or concealment of a
6 material fact know to the defendants with the intention on the
7 part of the defendants of thereby depriving the plaintiff of
8 property or legal rights causing injury, and was despicable
9 conduct that subjected plaintiff to a cruel unjust hardship in
10 conscious disregard of the plaintiff's rights, so as to justify
11 an award of exemplary and punitive damages.

12 Wherefore Plaintiff prays for judgment against Defendants
13 as more fully set forth below.

14 FOURTH CAUSE OF ACTION

15 WIRE FRAUD

16 18 U.S.C. SECTION 1343

17 70. Plaintiff realleges and incorporates therein by
18 reference every allegation stated herein.

19 71. Plaintiff is informed, believes and therefore alleges
20 that between March 9, 2007 and May 2, 2007, Defendants and members
21 of Aramark Management utilized emails, the telephone or by fax
22 to further their Scheme to defraud Plaintiff by attempting to
23 cover-up a "would be" disability discrimination claim and
24 wrongful termination Claim pursuant to the ADA, the UNRUH and
25

1 FEHA.

2 72. Plaintiff is informed, believes and therefore alleges
3 that between March 9, 2007 and May 2, 2007, Defendants and members
4 of Management of Aramark conspired with defendants Gray & Prouty
5 and Morgan & Lewis to submit the offer to plaintiff in the form
6 of the agreement.

7 73. Defendant's use of the above mentions methods of
8 Communication to defraud plaintiff violated Section California
9 Civil Codes 1709, 1710 and 18 U.S.C. Section 1343.

10 74. As a proximate result of the Fraudulent conduct or the
11 defendants as herein alleged, Plaintiff was subjected to Fraud
12 and Intentional Deceit and WIRE FRAUD, causing plaintiff
13 emotional distress.

14 75. The aforementioned conduct of defendants was an
15 intentional misrepresentation, deceit, or concealment of a
16 material fact know to the defendants with the intention on the
17 part of the defendants, thereby depriving the plaintiff of
18 property or legal rights causing injury to plaintiff, and was
19 despicable conduct that subjected plaintiff to a cruel unjust
20 hardship in conscious disregard of the plaintiff's rights, so as
21 to justify an award of exemplary and punitive damages.

22 Wherefore Plaintiff prays for judgment against Defendants
23 as more fully set forth below.

24 FIFTH CAUSE OF ACTION

25 COMPLAINT FOR DAMAGES, CIVIL RIGHTS

BREACH OF FUDICIARY DUTY

76. Plaintiff realleges and incorporates therein by reference every allegation stated herein.

77. Defendants, a third party administrator, breached their fiduciary duty, as a third party administrator, they were negligent in their duties and behaved in a way that was despicable due to them being a third party administrator, having a duty of care to uphold the law, knowing they were helping break the law. Defendants knew the acts being committed were being done for fraudulent reasons and still allowed themselves to conspire with their clients to help defraud plaintiff. Defendants recognized the risks created by their actions and Aramark actions and understood what could happen from those risks taken.

78. Plaintiff alleges that defendants knew all detail regarding plaintiff's employment with their client Aramark, including knowing when plaintiff actually resigned and why. Defendants knew requesting and coercing plaintiff to sign the agreement presented on May 2, 2007 was to void out the original agreement plaintiff signed on March 28, 2006 to help shield their client Aramark from a possible discrimination claim from plaintiff.

79. Plaintiff alleges that third party administrators are held to a higher standard of care than an ordinary reasonable

1 person would be. They must behave as a reasonable third party
2 administrator would do so rather than a reasonable person. The
3 perspective of a third party administrator would be different
4 matters in the court. Defendant Specialty Risk Services and
5 their employee Gretchen Devine owe plaintiff a reasonable
6 standard of care.

7 80. Plaintiff alleges that the defendants' acts breached
8 their fiduciary duty violating section 3300 of the California
9 Civil Code.

10 81. As a direct and proximate result of said breach,
11 plaintiff has suffered the actual and special and general
12 damages as alleged, and which are incorporated herein by this
13 reference, and seek recovery of the same, and for an award of
14 costs and reasonable attorney fees.

15 82. Plaintiff alleges that the defendants' breach was
16 committed to defraud plaintiff and was in conscious disregard of
17 plaintiff's rights and was willful, oppressive and malicious;
18 and designed to cause plaintiff to suffer economic and emotional
19 injury. Plaintiff is therefore entitled to an award of exemplary
20 and punitive damages against defendants, in an amount to be
21 determined at trial.

22 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23 83. Plaintiff realleges and incorporates therein by
24 reference every allegation stated herein.

1 84. The fraudulent actions of defendants were outrageous,
2 intentional and malicious and done with reckless disregard of
3 the fact that they would certainly cause plaintiff to suffer
4 severe emotional and physical distress. Defendants knew that
5 defrauding plaintiff in an attempt to deprive from his "would
6 be" Disability Discrimination Claim would certainly cause him to
7 suffer severe emotional and physical distress. Defendants also
8 knew Plaintiff had already suffered psychological injury due to
9 the previous acts of the Aramark while Plaintiff was employed at
10 the Carnelian Room, but still proceeded with their Fraudulent
11 acts after Plaintiff resigned or was constructively Discharged.

12 85. As a proximate result of the acts of defendants,
13 Plaintiff has and will more than likely continue to suffer
14 emotional distress in the form of fear, anxiety, worry, and
15 mental suffering as the injury will have an effect on
16 Plaintiff's future capacity to work and earn income.

17 86. Plaintiff will seek more psychological counseling as a
18 result of the defendants conduct.

19 87. As a proximate result of Defendants conduct, Plaintiff
20 has suffered general Damages in an amount to be determined by
21 Proof at Trial.

22 88. Defendants conduct was done knowingly, willfully and
23 with malicious intent and Plaintiff can prove the fraudulent
24 acts of Defendants by "clear and convincing" evidences and
25

1 therefore Plaintiff is entitled to Punitive Damages in an amount
2 to be determined by Proof at trial.

3 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

4 89. Plaintiff realleges and incorporates therein by
5 reference every allegation stated herein.

6 90. Plaintiff is informed, believes and therefore alleges
7 that Defendant Specialty Risk Services is negligent in causing
8 plaintiff Emotional Distress, in that Defendant specialty risk
9 services has breached their duty of care by allowing themselves
10 as third party administrators and their client Aramark to
11 intentionally inflict Plaintiff with Emotional Distress causing
12 Plaintiff injury resulting in damages. Defendants' negligence
13 causing of Emotional Distress is not an independent Tort: it is
14 a Tort of Negligence.

15 91. As a proximate result of the fraudulent conduct of the
16 defendants as herein alleged, caused plaintiff emotional
17 distress.

18 Wherefore Plaintiff prays for judgment against Defendants
19 as more fully set forth below.

20 PRAYER FOR RELIEF

21 WHEREFORE, Plaintiff FOSTER prays for judgment against
22 defendants, and each of them, as more fully set forth below:

- 23 1. For general damages, including emotional distress,
24 according to proof;

2. For statutory penalties and all relief allowed by statute according to proof;
3. For punitive damages;
4. For an award of attorney's fees;
5. For pre-judgment interest at the legal rate according to proof;
6. For costs of suit incurred;
7. For such other and further relief as the court may deem proper.

Dated: *February 7, 2008*

Mark Antoine Foster
Mark Antoine Foster, In Pro Per

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: *Speciality Risk Services*
(AVISO AL DEMANDADO): *And ~~Bretchen~~ Devine*
as an individual and
Does 1. through 91

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARK ANTOINE FOSTER

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es): **SUPERIOR COURT**
100 MCALLISTER STREET RM 103
SAN FRANCISCO CA 94102

CASE NUMBER:
(Número del Caso): **66C-08-471939**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MARK A. Foster *415-756-1611*
200 Corpus Christi Rd #A
DATE: *Alameda Ca 94502* *Gordon Park*, Deputy
(Fecha) **FEB 07 2008** (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify).

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

[SEAL]

Page 1 of 1

ENDORSED
FILED
Superior Court of California
County of San Francisco

FEE 07 2008

GORDON PARK-LI, Clerk

BY: DEBORAH STEPPE
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JUL 11 2008 -9⁰⁰AM

DEPARTMENT 212

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CIVIL UNLIMITED JURISDICTION ~~CCC-08-471936~~

**COMPLAINT FOR DAMAGES FOR
CIVIL RIGHTS (related to
Employment discrimination)**

MARK ANTOINE FOSTER,

Plaintiff,

vs.

ARAMARK SPORTS L.L.C, and ARAMARK
CORPORATION, and DOES 1
Through 73
Defendants

1. Fraud and Intentional Deceit
2. Intentional Misrepresentation of Fact
3. Negligent Misrepresentation
4. Suppression of Fact
5. Mail Fraud (18 U.S.C Sec. §1341)
6. Conspiracy to Mail Fraud (18 U.S.C. Sec. §1345, §1349)
7. Wire Fraud (18 U.S.C. Sec. §1343)
8. Intentional Infliction of Emotional Distress
9. Negligent Infliction of Emotional Distress

INTRODUCTION

This case is brought against defendants pursuant to California Codes of Civil Procedure §1709, §1710 and §1572 for committing acts that constitute fraud and intentional deceit, mail fraud and wire fraud and conspiracy to defraud. Defendant's acts were related to plaintiff's previous employment with the

1 defendants, as defendants committed these acts after plaintiff's
2 employment with the defendants ended.

3 Although the acts were committed after plaintiff's
4 employment ended, the acts were connected to claims plaintiff
5 alleged in a previous complaint plaintiff filed against
6 defendants in San Francisco Superior Court on March 9, 2007.
7 These acts show a continuing pattern of further deprivation of
8 plaintiff's civil rights by defendants.

9 The connected case number 07461178, which alleges acts that
10 were committed by defendants while plaintiff was employed with
11 the defendants has been presently removed to federal court by
12 defendants on or around January 31, 2008, which plaintiff
13 believes is an attempt to delay trial and prosecution of the
14 case in state court. Plaintiff will file a motion for remand in
15 federal court to have the case moved back to state court within
16 30 days of its removal.

17 Defendants stated to the court in their case management
18 conference statement that they would file a motion for summary
19 judgment or as an alternative a motion for summary adjudication
20 but instead, upon discovering that plaintiff has acquired enough
21 evidence to support his claims through his own discovery plan,
22 defendants removed the case to federal court in an attempt to
23 divert plaintiff and gather their thoughts as to how they want
24 and should settle the case.

25 Plaintiff will also file a second amended complaint adding

1 claims alleging Wrongful Termination, additional retaliation
2 that resulted in Fraud and Intentional Deceit, Suppression of
3 Fact, and to change quid pro quo sexual harassment to hostile
4 work environment sexual harassment.

5 Plaintiff will also file a supplemental complaint alleging
6 continued retaliation after plaintiff filed his complaint on
7 March 9, 2007.

8 PARTIES

9 1. Plaintiff Mark Antoine Foster was an employee of
10 Aramark Sports and Entertainment, a subsidiary of Aramark
11 Corporation. He worked for the Carnelian Room located at 555
12 California Street, San Francisco, California.

13 2. Defendants does 1 through 73, inclusive, are sued
14 under fictitious names. Their true names and capacities are
15 unknown to plaintiff. When their true names and capacities are
16 ascertained, plaintiff will amend this complaint by inserting
17 their true names and capacities herein. Plaintiff is informed
18 and believes and thereon alleges that each of the fictitiously
19 named defendants is responsible in some manner for the
20 occurrences herein alleged, and such defendants caused plaintiff
21 damages as herein alleged.

22 3. Plaintiff is informed and believes, and thereon
23 alleges, that at all times herein mentioned each and every
24 defendant was the agent, servant, employee and/or representative
25 of each other defendant and was, in doing the things complained

1 of herein, acting within the scope of said agency, service,
2 employment and or representation, and that each and every
3 defendant herein is jointly and severally responsible and liable
4 to plaintiff for the damages hereinafter alleged.

5 JURISDICTION AND VENUE

6 4. Jurisdiction is proper in this court as the acts
7 complained of occurred in San Francisco,
8 California.

9 5. The amount in controversy exceeds limited
10 jurisdiction.

11 6. Plaintiff timely files this complaint, as he
12 discovered the fraudulent acts of the defendants in
13 December 2007.

14 7. Plaintiff will amend this complaint to allege those
15 causes of action once defendants respond to the claim.

16 **FIRST CAUSE OF ACTION**
FRAUD AND INTENTIONAL DECEIT
(California Civil Codes §1709, §1710 and §1572)
17 **FIRST COUNT**
INTENTIONAL MISREPRESENTATION OF FACT

18 8. Plaintiff realleges and incorporates herein by
19 reference every allegation stated herein.

20 9. Plaintiff is informed, believes and therefore alleges
21 that defendants' acts constituted fraud and intentional deceit
22 due to the defendants attempting to cover-up a possible or
23 would-be disability discrimination claim from plaintiff, in the
24 event plaintiff discovered that the defendants discriminated
25

1 against due to his disability.

2 10. On or around March 28, 2006, plaintiff requested a
3 medical leave from the defendants due to work related stress
4 allegedly caused by two of the defendants' supervisor/managers.
5 On or around March 28, 2006, plaintiff signed an voluntary
6 resignation agreement stating he would return no later than June
7 15, 2006 and that if he did not return by June 15, 2006, his
8 absence would be considered a voluntary quit and he will be
9 terminated on that day.

10 11. On or around June 15, 2006, plaintiff did not return
11 to work due to (1) still being disabled and (2) due to fear of
12 further retaliation from defendants, and (3) due to fear of
13 being terminated once he did return to work for the defendants.

14 12. Plaintiff is informed, believes and therefore alleges
15 that he was forced to resign on June 15, 2006, pursuant to the
16 voluntary resignation agreement he signed on March 28, 2006,
17 absent defendants offering plaintiff a further reasonable
18 accommodation to his disability before allowing him to "
19 voluntarily quit", as voluntary quit in this case is voluntary
20 termination which results in its simple form - termination of
21 employment.

22 13. On or around March 9, 2007, plaintiff filed a
23 complaint against defendants Aramark Sports, LLC, and Ying Kee
24 McVicker and Mathew Lee as individuals, alleging Retaliation,
25

1 Harassment, Constructive Discharge, Failure to Prevent
2 Harassment, and Intentional Infliction of Emotional Distress.
3 Plaintiff did not in this complaint allege Disability
4 Discrimination due to not knowing he^e was or had been subject to
5 disability Discrimination at that point in time. Plaintiff
6 discovered in December 2007 that he had been subject to
7 disability discrimination on June 15, 2006.

8 14. Plaintiff alleges that sometime in Feb.2007, he
9 requested his employee records from Defendants, specifically
10 Defendants' HR Manager, James Chan. Mr. Chan released plaintiff's
11 employee records which contained a copy of the voluntary
12 resignation agreement dated March 28, 2006 that plaintiff signed
13 agreeing to return on June 15 2006. On the Face of the Voluntary
14 Resignation Agreement was a notation made by James Chan stating
15 that he communicated with the Executive Chef regarding plaintiff
16 not returning to work on June 15, 2006. Plaintiff alleges that
17 this is evidence that he was terminated pursuant to the
18 voluntary resignation agreement, in addition to the fact that
19 the mere existence of the voluntary resignation agreement shows
20 plaintiff was more than likely terminated pursuant to it.

21 15. On or around August 28, 2007, plaintiff served
22 defendants a request for documents demanding all documents
23 relevant to his termination, instead of defendants producing the
24 same documents he received from James Chan before he filed his
25

1 lawsuit defendants presented another version of the voluntary
2 resignation without the notation of James Chan on the face of
3 the agreement. This shows defendants withheld evidence.

4 16. On or around December 20, 2007, plaintiff realized
5 through research that he had been subject to Disability
6 Discrimination and in December 2007, filed a motion to amend his
7 complaint to add Disability Discrimination under the ADA, UNRUH
8 and FEHA. Defendants stipulated with plaintiff to allow the
9 amendment.

10 17. On or Around Jan 15, 2008, Plaintiff discovered
11 through his Discovery served on defendants that he was defrauded
12 by defendants, as defendants attempted to cover up the fact that
13 they had discriminated against plaintiff due to his mental
14 disability.

15 18. On or around May 2, 2007, defendants, through their
16 Worker's compensation Attorneys Gray and Prouty, requested that
17 plaintiff agree and sign a document stating that he voluntarily
18 resigned on May 1, 2007. The purpose for defendants' request was
19 to allow the proposed agreement to void out the agreement signed
20 on March 28, 2006, as this agreement is the initial and actual
21 reason why plaintiff was terminated: which was when Plaintiff
22 was forced to resign due to his disability violating ADA, the
23 Unruh and FEHA.

24 19. Defendants through their council submitted the
25

1 agreement to plaintiff for his signature. Plaintiff then refused
2 to agree that he resigned on May 1, 2007, knowing that he
3 resigned on June 15, 2006, pursuant to the agreement signed on
4 March 28, 2006.

5 20. Defendants insisted that plaintiff signed the
6 agreement prior to releasing his already agreed upon Worker's
7 Compensation settlement of \$5,500. Plaintiff altered the date
8 and signed the agreement as voluntarily resigning on June 15,
9 2006, not May 1, 2007 as Defendants requested he do. Although
10 plaintiff did not sign the agreement as voluntarily resigning on
11 May 1, 2007, he did sign agreeing that he *voluntarily resigned*
12 on June 15, 2006. Even though Defendants were not successful in
13 getting plaintiff to agree that he resigned on May 1, 2007, they
14 planned to use the agreement anyway to void out the original
15 agreement signed on March 28, 2006. Defendant planned to use the
16 new agreement to say that plaintiff resigned on June 15, 2006 to
17 give the impression that he voluntarily resigned on his own on
18 June 15, 2006 and not pursuant to the agreement he signed on
19 March 28, 2006, to shield themselves from disability
20 discrimination. Although the mere existence of any voluntary
21 agreement plaintiff signed in May 2007, or anytime thereafter is
22 a fraud.

23 21. Plaintiff is informed believes and therefore alleges
24 that the defendants made a false representation offering the
25

1 voluntary resignation agreement. The true facts being;
2 Defendants forced plaintiff to resign pursuant to the voluntary
3 resignation agreement he signed on March 28, 2006, and defendants
4 were attempting to suppress this material fact, requesting that
5 he sign the agreement presented on May 2, 2007. This act was
6 FRAUD in its purest Form. Defendants used their Worker's
7 Compensation Attorney, Gray and Prouty, and held back the agreed
8 upon settlement to coerce plaintiff to sign the agreement, to
9 help plaintiff defraud his own self. Plaintiff signed the
10 agreement and returned it, as this proves that the FRAUD reached
11 its full Fruition or Justifiable reliance, damaging plaintiff
12 even further.

13 22. Plaintiff alleges that it was a misrepresentation of
14 Material Fact by Defendants to request plaintiff to agree and
15 sign an agreement stating that his voluntary resignation was on
16 a date after he had already voluntarily resigned in an attempt
17 to cover up a possible disability discrimination claim against
18 them.

19 23. Defendants attempt to use the document to void out his
20 original resignation agreement signed on March 28, 2006 was
21 despicable conduct done with malice. Defendants attempted to
22 defraud Plaintiff of his rightful claim of disability
23 discrimination and the tangible and intangible benefits
24 representing monetary and other damages that could be awarded
25

1 due to the disability claim. This act is clearly a intentional
2 misrepresentation of Material Fact.

3 24. When the Defendants made the representations, they
4 knew them to be false or were based on false pretenses or
5 misrepresentations, as the defendants made these representations
6 with the intention to deceive and defraud plaintiff and to
7 induce plaintiff to act in reliance on these representations in
8 the manner alleged, or with the expectation that plaintiff would
9 so act. Defendants expected plaintiff to sign the agreement so
10 he could receive his WC Settlement of \$5,500 and coerced him to
11 sign the agreement before agreeing to release payment of the
12 \$5,500 to him.

13 25. Plaintiff at the time these representations were made
14 by Defendants, believed that that the Defendants representations
15 were true. Due to believing, plaintiff thought it was acceptable
16 or alright to sign the document, and that it was not depriving
17 him of any further rights and that there was a legal forthright
18 reason for defendants requesting him to sign the voluntary
19 agreement. Defendants used their council to help trick plaintiff
20 by presenting the document as if it was legal, when actually it
21 was not, as this shows that plaintiff's reliance on defendant
22 representation was justified.

23 26. Plaintiff alleges that he has satisfied all the
24 elements for intention misrepresentations, which includes: (1)
25

1 misrepresentations (2) Material Fact (3) Knowledge of Falsity
2 (4) Intent to induce reliance (5) Justifiable reliance and (6)
3 Causation and Damages

4 27. Defendants attempt to defraud Plaintiff violated
5 California Civil Codes §1709, §1710, and §1572

6 28. As a proximate result of the fraudulent conduct or the
7 defendants as herein alleged, plaintiff was subjected to Fraud
8 and Intentional Deceit that subject or caused him emotional
9 distress and mental anguish.

10 29. The aforementioned conduct of defendants was an
11 intentional misrepresentation, deceit, or concealment of a
12 material fact known to the defendants with the intention on the
13 part of the defendants of to deprive the plaintiff of property
14 or legal rights, causing injury, and was despicable conduct that
15 subjected plaintiff to a cruel unjust hardship in conscious
16 disregard of the plaintiff's rights, so as to justify an award
17 of exemplary and punitive damages.

18 SECOND COUNT

19 Negligent Misrepresentation

20 30. When the defendants made the representation they had
21 no reasonable grounds for believing them to be true. Defendants
22 knew that (1) it was not necessary for Plaintiff to sign the
23 Agreement at all (2) it was not necessary for plaintiff to sign
24 the agreement as a condition to him receiving or defendants
25

1 releasing plaintiff already agreed upon worker's compensation
2 settlement of \$5,500.

3 31. Plaintiff alleges that the defendants made the
4 representation with intent to induce plaintiff to rely upon it.

5 32. Plaintiff alleges that he was unaware of the falsity
6 of the representation; in that he did not know that the purpose
7 or the agreement was to shield the defendants from a possible
8 discrimination disability claim from plaintiff, depriving
9 plaintiff of any possible monetary damages from the claim.

10 33. Plaintiff alleges that he acted in reliance upon the
11 truth of the representation; as in him thinking it was necessary
12 to sign the agreement, as he believed it to be safe or true
13 because it was presented to him by Defendants worker's
14 compensation attorney. Plaintiff believed it to be true
15 because he knew Defendants WC Attorney knew exactly when he
16 actually resigned or knew Plaintiff resigned on June 15, 2006
17 pursuant to the March 28, 2006 agreement.

18 34. Defendants initiating these actions in an attempt to
19 DEFRAUD plaintiff of his claim of disability discrimination and
20 any possible monetary damages that would be awarded in lieu of
21 the disability discrimination claim, violated California Codes
22 \$1572, \$1709 and \$1710, Therefore Plaintiff is entitled to
23 Statutory Damages, Costs and awards of Attorney Fees.

24 THIRD COUNT

Suppression of Fact

35. Defendants suppressed the fact that if was not necessary for Plaintiff to agree and sign the voluntary resignation agreement to receive his worker's compensation settlement of \$5,500.

36. In addition on or around July 2, 2007, defendants worker's compensation Attorney Dana Mitchell filed an opposition to plaintiff's Readiness to Proceed. In the opposition, Defendants state or implied that the reason plaintiff's settlement of \$5,500 had not been paid was due to plaintiff filing an EEOC Claim subsequent to agreeing to the settlement of \$5,500 with defendants. Plaintiff believes that defendants lied to the Worker's Compensation Appeals Board to create a "Smoke screen" or cover up as to the actual reason plaintiff's settlement was held up, which was defendants wanting to force plaintiff to sign the agreement to shield them from the disability discrimination claim. Defendants concealed from the Worker's Compensation Appeals Board that there was no EEOC Claim filed by plaintiff subsequent to the agreement of the worker's compensation Settlement.

37. The defendants made the failure to disclose and suppressed and/or concealed the information mentioned herein alleged, with the intent to induce the plaintiff to act in the manner herein alleged in reliance thereupon, with the intent to

1 cause plaintiff to sign the agreement.

2 38. As a proximate result of the fraudulent conduct or the
3 defendants as herein alleged, plaintiff was subjected to Fraud
4 and Intentional Deceit that subject or caused him emotional
5 distress and mental anguish.

6 39. The aforementioned conduct of defendants was an
7 intentional misrepresentation, deceit, or concealment of a
8 material fact known to the defendants with the intention on the
9 part of the defendants of to deprive the plaintiff of property
10 or legal rights, causing injury, and was despicable conduct that
11 subjected plaintiff to a cruel unjust hardship in conscious
12 disregard of the plaintiff's rights, so as to justify an award
13 of exemplary and punitive damages.

14 40. Defendants' attempt to defraud plaintiff violated
15 section §1572 of the California Civil Code. Plaintiff is
16 therefore entitled to Statutory Damages, Costs and award of
17 Attorney fees.

18 Wherefore Plaintiff prays for judgment against Defendants as
19 more fully set forth below.

20 SECOND CAUSE OF ACTION

21 Mail Fraud (18 U.S.C. Section §1341)

22 41. Plaintiff realleges and incorporates therein by
23 reference every allegation stated herein.

24 42. On or around May 2, 2007 Defendants mailed to
25

1 Plaintiff by way of his Worker's Compensation Attorney Mary Lou
2 Williams, the voluntary agreement, which was the execution of a
3 scheme to defraud plaintiff.

4 43. Title 18 - Crimes and Criminal Procedures, Part 1 -
5 Crimes Chapter 63 section 1341 Frauds and Swindles States:
6 Whoever, having devised or intending to devise any scheme or
7 artifice to defraud, or for obtaining money or property by means
8 of false or fraudulent pretenses, representations, or promises,
9 or to sell, dispose of, loan, exchange, alter, give away,
10 distribute, supply, or furnish or procure for unlawful use any
11 counterfeit or spurious coin, obligation, security, or other
12 article, or other article, or anything represented to be or
13 intimated or held out to be such counterfeit or spurious
14 article, for the purpose of executing such scheme or artifice or
15 attempting so to do, places in any post office or authorized
16 depository for mail matter, any matter or thing whatever to sent
17 or delivered by the Postal Service, or Deposits or causes to be
18 deposited any matter or thing whatever to sent or delivered by
19 any private or commercial interstate carrier, or takes or
20 receives therefrom, any such matter or thing, or knowingly
21 causes to be delivered by mail or such carrier according to the
22 direction thereon, or at the place at which it is directed to be
23 delivered by the person to whom it is addressed, any such matter
24 or thing shall be fined under this title or shall be fined under

1 this title or imprisoned not more than 20 years, or both.

2 44. Upon Defendants placing the Voluntary Resignation
3 Agreement in the Post Office for Mail matter to be sent by the
4 Postal Service, the Defendants committed Mail Fraud.

5 FIRST COUNT OF MAIL FRAUD

6 45. On or around May 2, 2007 upon Defendants mailing the
7 Voluntary Resignation Agreement to Mary Lou Williams at 4104 24th
8 Street, San Francisco, CA 94104 constitutes first count of mail
9 fraud.

10 SECOND COUNT OF MAIL FRAUD

11 46. On or around May 2, 2007 upon Defendants mailing a copy
12 of the Voluntary Resignation Agreement to Gretchen McCoy at SRS,
13 at P.O. Box 591, Burbank, CA constitutes second count of mail
14 fraud, as it was initiated to further the Scheme.

15 THIRD COUNT OF MAIL FRAUD

16 47. On or around May 2, 2007 upon Defendants mailing a
17 copy of the Voluntary Resignation Agreement to Mark Antoine
18 Foster at 225 Ellis Street, San Francisco, CA., constitutes a
19 third count of mail fraud, as it was initiated to further the
20 Scheme.

21 FOURTH COUNT OF MAIL FRAUD

22 48. On or around July 3, 2007 upon Defendants mailing a
23 copy of the opposition to Plaintiff's Declaration of Readiness
24 to Proceed to the Worker's Compensation Appeals Board

1 constitutes a Fourth Count of MAIL FRAUD, as it was initiated to
2 further the Scheme.

3 FIFTH COUNT OF MAIL FRAUD

4 49. On or around July 3, 2007 upon Defendants mailing a
5 copy of the opposition to Plaintiff's Declaration of Readiness
6 to Proceed Mary Lou Williams at 4104 24th Street, San Francisco,
7 CA 94104 constitutes a Fifth Count of MAIL FRAUD, as it was
8 initiated to further the Scheme.

9 SIXTH COUNT OF MAIL FRAUD

10 50. On or around July 3, 2007 upon Defendants mailing a
11 copy of the opposition to Plaintiff's Declaration of Readiness
12 to Proceed Gretchen Devine at Specialty Risk Services at P.O.
13 Box 591, Burlingame, CA constitutes a Sixth Count of MAIL FRAUD,
14 as it was initiated to further the Scheme.

15 51. As a proximate result of the fraudulent conduct or the
16 defendants as herein alleged, plaintiff was subjected to Fraud
17 and Intentional Deceit that subject or caused him emotional
18 distress and mental anguish.

19 52. The aforementioned conduct of defendants was an
20 intentional misrepresentation, deceit, or concealment of a
21 material fact know to the defendants with the intention on the
22 part of the defendants of to deprive the plaintiff of property
23 or legal rights, causing injury, and was despicable conduct that
24 subjected plaintiff to a cruel unjust hardship in conscious
25

1 disregard of the plaintiff's rights, so as to justify an award
2 of exemplary and punitive damages.

3 Wherefore Plaintiff prays for judgment against Defendants as
4 more fully set forth below.

5 CONSPIRACY TO DEFRAUD

6 (18 U.S.C. SECTION §1345, §1349)

7 53. Plaintiff realleges and incorporates therein by
8 reference every allegation stated herein.

9 54. Plaintiff is informed, believes and therefore alleges
10 that between March 9, 2007 and May 1, 2007 Defendants and/or
11 members of Management conspired to defraud plaintiff by
12 attempting to cover-up a "would be" Disability Discrimination
13 Claim and wrongful termination Claim pursuant to the ADA, the
14 UNRUH and FEHA.

15 55. Plaintiff is informed, believes and therefore alleges
16 that Aramark's managers conspired and authorized their council,
17 both Gray & Prouty and Morgan & Lewis to submit and offer the
18 Voluntary Resignation Agreement to plaintiff, on May 2, 2007,
19 knowing it was being submitted for fraudulent reasons.

20 56. Defendants conspiring to defraud plaintiff violated
21 California Civil Codes §1709, §1710 and §1572 and 18 U.S.C.
22 Section 1345, and 1349.

23 57. As a proximate result of the fraudulent conduct of the
24 defendants as herein alleged, plaintiff was subjected to fraud

1 and intentional deceit and MAIL FRAUD, causing him emotional
2 distress and mental anguish.

3 58. The aforementioned conduct of defendants was an
4 intentional misrepresentation deceit, or concealment of a
5 material fact known to the defendants with the intention on the
6 part of the defendants of thereby depriving the plaintiff of
7 property or legal rights causing injury, and was despicable
8 conduct that subjected plaintiff to a cruel unjust hardship in
9 conscious disregard of the plaintiff's rights, so as to justify
10 an award of exemplary and punitive damages.

11 Wherefore Plaintiff prays for judgment against Defendants as
12 more fully set forth below.

13 WIRE FRAUD

14 18 U.S.C. SECTION §1343

15 59. Plaintiff realleges and incorporates therein by
16 reference every allegation stated herein.

17 60. Plaintiff is informed, believes and therefore alleges
18 that between March 9, 2007 and May 2, 2007, Defendants and/or
19 members of Management of Aramark utilized emails, the telephone
20 or by fax to further their Scheme to defraud Plaintiff by
21 attempting to cover-up a "would be" disability discrimination
22 claim and wrongful termination Claim pursuant to the ADA, the
23 UNRUH and FEHA.

24 61. Plaintiff is informed, believes and therefore alleges
25

1 that between March 9, 2007 and May 2, 2007, Defendants and ~~or~~
2 members of Management of Aramark conspired and Authorized their
3 council Gray & Prouty and Morgan & Lewis to submit the offer to
4 plaintiff in the form of the agreement.

5 62. Defendant's use of the above mentions methods of
6 Communication to defraud plaintiff violated Section California
7 Civil Codes §1709, §1710 and 18 U.S.C. Section §1343.

8 63. As a proximate result of the Fraudulent conduct or the
9 defendants as herein alleged, Plaintiff was subjected to Fraud
10 and Intentional Deceit and WIRE FRAUD, causing plaintiff
11 emotional distress and mental anguish.

12 64. The aforementioned conduct of defendants was an
13 intentional misrepresentation, deceit, or concealment of a
14 material fact known to the defendants, with the intention on the
15 part of the defendants, thereby depriving the plaintiff of
16 property or legal rights, causing injury to plaintiff, and was
17 despicable conduct that subjected plaintiff to a cruel unjust
18 hardship in conscious disregard of the plaintiff's rights, so as
19 to justify an award of exemplary and punitive damages.

20 Wherefore Plaintiff prays for judgment against Defendants as
21 more fully set forth below.

22 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23 65. Plaintiff realleges and incorporates therein by
24 reference every allegation stated herein.

1 66. The fraudulent actions of defendants were outrageous,
2 intentional and malicious and done with reckless disregard of
3 the fact that they would certainly cause plaintiff to suffer
4 severe emotional and physical distress. Defendants knew that
5 defrauding plaintiff in an attempt to deprive from his "would
6 be" Disability Discrimination Claim would certainly cause him to
7 suffer severe emotional and physical distress. Defendants also
8 knew Plaintiff had already suffered psychological injury due to
9 the previous acts of the Defendants while Plaintiff was employed
10 at the Carnelian Room, but still proceeded with their Fraudulent
11 acts after Plaintiff resigned or was constructively Discharged.

12 67. As a proximate result of the acts of defendants,
13 Plaintiff has and will more than likely continue to suffer
14 emotional distress in the form of fear, anxiety, worry, and
15 mental suffering as the injury will have an effect on
16 Plaintiff's future capacity to work and earn income.

17 68. Plaintiff will seek more psychological counseling as a
18 result of the defendants conduct.

19 69. As a proximate result of Defendants conduct, Plaintiff
20 has suffered general Damages in an amount to be determined by
21 Proof at Trial.

22 70. Defendants conduct was done knowingly, willfully and
23 with malicious intent and Plaintiff can prove the fraudulent
24 acts of Defendants by "clear and convincing" evidences and
25

1 therefore Plaintiff is entitled o Punitive Damages in an amount
2 to be determined by Proof at trial.

3 Wherefore Plaintiff prays for judgment against Defendants as
4 more fully set forth below.

5 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

6 71. Plaintiff realleges and incorporates therein by
7 reference every allegation stated herein.

8 72. Plaintiff is informed, believes and therefore alleges
9 that Defendant Aramark Corporation is negligent in causing
10 plaintiff Emotional Distress, in that Defendant Aramark
11 Corporation has breached their duty of care by allowing Aramark
12 Sports, LLC, and its Managers to intentionally inflict Plaintiff
13 with Emotional Distress causing Plaintiff injury resulting in
14 damages. Defendants' negligence causing of Emotional Distress is
15 not an independent Tort: it is a Tort of Negligence.

16 73. As a proximate result of the fraudulent conduct of the
17 defendants as herein alleged, Plaintiff has suffered general
18 Damages in an amount to be determined by Proof at Trial.

19 Wherefore Plaintiff prays for judgment against Defendants as
20 more fully set forth below.

21 PRAYER FOR RELEIF

22 WHEREFORE, Plaintiff FOSTER prays for judgment against
23 defendants, and each of them, as more fully set forth below:

24 1. For general damages, including emotional distress,
25

1 according to proof;

2 2. For statutory penalties and all relief allowed by
3 statute according to proof;

4 3. For punitive damages;

5 4. for an award of attorney's fees;

6 5. For pre-judgment interest at the legal rate according to
7 proof;

8 6. For costs of suit incurred;

9 7. For such other and further relief as the court may deem
10 proper.

11 Dated: *February 7, 2008*

Mark Antoine Foster
Mark Antoine Foster, In Pro Per

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: ARAMARK SPORTS L.L.C.
(AVISO AL DEMANDADO): And ARAMARK CORPORATION
And Does 1 through 73

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARK ANTOINE FOSTER

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: **SUPERIOR COURT**
(El nombre y dirección de la corte es): **400 MCALLISTER STREET RM 103**
SAN FRANCISCO, CA 94102

CASE NUMBER: **06C-08-471936**
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MARK ANTOINE FOSTER
200 Corpus Christie Rd #14
Alameda, CA 94502

DATE: **FEB 07 2008** **Gordon Park**

Clerk, by **D. STEPPE**, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

Page 1 of 1

EXHIBIT 3

MELINDA S. RIECHERT, State Bar No. 65504
MORGAN, LEWIS & BOCKIUS LLP
2 Palo Alto Square
3000 El Camino Real, Suite 700
Palo Alto, CA 94306-2122
Tel: 650.843.4000
Fax: 650.843.400

SUZANNE BOAG, State Bar No. 250441
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1126
Tel: 415.442.1000
Fax: 415.442.1001

Attorney for Defendants
MORGAN LEWIS & BOCKIUS LLP and ERIC
MECKLEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK ANTOINE FOSTER,

Plaintiff,

vs.

MORGAN LEWIS & BOCKIUS, LLP,
and ERIC MECKLEY, as an Individual,
and DOES 1 through 81,

Defendants.

Case No. CGC-08-471937

**NOTICE TO PLAINTIFF AND TO THE
SUPERIOR COURT OF REMOVAL OF
ACTION TO FEDERAL COURT**

Action Filed: February 7, 2008

TO THE CLERK OF THE ABOVE-CAPTIONED COURT AND TO PLAINTIFF:

PLEASE TAKE NOTICE that on March 7, 2008, Defendants MORGAN LEWIS &
BOCKIUS LLP and ERIC MECKLEY ("Defendants") filed a Notice of Removal of the above-
captioned action to the United States District Court for the Northern District of California, San
Francisco Division, United States District Court Case No. C-08-01337 EDL.

A true and correct copy of the Notice of Removal of Action, along with all exhibits and
attachments thereto, is attached to this notice as **Exhibit 1** and is filed and served herewith.

1 PLEASE TAKE FURTHER NOTICE that pursuant to Title 28 United States Code
2 Section 1446, the filing of said Notice of Removal of Action in the United States District Court
3 for the Northern District of California, together with the filing and service of a copy of said
4 Notice herein, effects the removal of this cause of action, and the above-entitled Court may take
5 no further action with respect to this matter.

6 Dated: March 12, 2008

MORGAN, LEWIS & BOCKIUS LLP

7
8
9 By



Suzanne Boag
Attorney for Defendants MORGAN
LEWIS & BOCKIUS LLP and ERIC
MECKLEY